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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Calling Party Pays Service Option
in the Commercial Mobile Radio Services

WT Docket No. 97-207

To: The Commission

REPLY COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's ("Commission" or "FCC") rules, 47 C.F.R. §§ 1.415 and 1.419, hereby submits these Reply Comments in the above-captioned proceeding.¹

The comments filed in this proceeding generally support PageNet's recommendation for a market-based, rather than regulatory, approach to developing a calling party pays ("CPP") service option for wireless services. As the comments uniformly reflect, any action by the Commission (or other regulatory agencies) to mandate the availability of a CPP service option for paging and other CMRS services would be inappropriate. *Cf. NOI* at ¶ 5. The majority of commenters urge the Commission to refrain from regulatory intervention and permit the market to decide the extent to which wireless CPP is a beneficial service and is ultimately made available.

¹ See *Calling Party Pays Service Option in the Commercial Mobile Radio Services*, Notice of Inquiry, WT Docket No. 97-207, FCC 97-341, released October 23, 1997 ("*NOI*").

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I. THE EXTENT OF THE ACTUAL BENEFITS OF CPP ARE UNCLEAR

The market evidence in the record on the benefits of a CPP service option is varied and contradictory. Given that there is contradictory and equivocal evidence, the FCC should defer to market forces -- as it has in other contexts with respect to CMRS competition -- so that carriers will be able to learn more about the actual benefits of CPP in the marketplace and determine how best to develop a CPP service option of optimal benefit to customers.

On the positive side, some cellular and broadband voice wireless carriers believe that CPP will provide some CMRS subscribers with a means of better controlling their costs while still allowing them to be available to receive incoming calls.² In contrast, paging carriers view the main potential benefit of a CPP service option as a niche service for lower volume or lower income paging customers who may not have credit to pay for a paging subscription on a monthly basis.³

However, the record does not uniformly demonstrate that CPP will increase usage. Findings from some cellular CPP service offerings show that customers reacted negatively to or were uninterested in the CPP service option. After two years, BellSouth has decided to discontinue the cellular CPP service option that it offered through its wireless affiliate in Hawaii, Honolulu Cellular Telephone Company, based on a lack of customer interest and a lack of economic value for the company with some subscribers actually preferring the

² Comments of AT&T Wireless Services, Inc. ("AT&T Wireless") at 2; Comments of AirTouch Communications, Inc. ("AirTouch") at 5; Comments of Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint Spectrum") at 4-5. Cellular and PCS carriers broadly define the potential market for CPP. Broadband PCS carriers "see CPP as a way to more quickly build a customer base, thereby resulting in a net economic benefit, even if the net margin per CPP call is lower than for traditional mobile radio billing practices." Omnipoint Comments at 18.

³ PageNet Comments at 3; Comments of Source One Wireless II, L.L.C. ("Source One") at 4; Comments of FreePage Corporation ("FreePage") at 2.

existing "receiving party pays" mode of cellular service.⁴ According to GTE's market research, cellular subscribers expressed a fear that assessing a CPP charge on the caller might discourage some clients from calling for business purposes or cause family and friends making calls for non-business purposes to view the CPP subscriber as "cheap."⁵

No commenter has shown that international CPP is a predicate for concluding that CPP will result in increased mobile usage in the U.S.⁶ Factors other than CPP may be responsible for the high level of mobile usage in foreign markets. The usage-based charges associated with CPP are not new to wireline callers in Europe and thus do not raise a customer education concern in foreign markets where measured local service with billing on a minute-of-use basis is already prevalent on the wireline network.⁷ Moreover, wireless networks in some foreign countries are as or more mature than wireline networks. Cellular customers in foreign markets such as Europe have habits -- such as leaving their cellular phones on during the day and recharging them every night -- that promote usage irrespective of CPP.⁸

⁴ Comments of BellSouth Corporation ("BellSouth") at 3-5.

⁵ Comments of GTE Service Corporation ("GTE") at 8.

⁶ Some broadband PCS and cellular carriers ascribe increased cellular usage in international markets to CPP and summarily conclude that CPP will similarly increase cellular demand in the U.S. *See, e.g.*, Comments of Vanguard Cellular Systems, Inc. ("Vanguard") at 6-9; Sprint Spectrum Comments at 2-4.

⁷ *See* Comments of SBC Communications Inc. ("SBC") at 14-15.

⁸ BellSouth Comments at 6-7; PageNet Comments at 6-7.

II. CPP IS A CMRS SERVICE THAT SHOULD BE ALLOWED TO DEVELOP WITH MARKET FORCES RATHER THAN BY REGULATORY MANDATE

Given that the record does not provide any clear evidence that CPP will benefit customers or increase CMRS competition, only the market will tell whether CPP ultimately will lead to clear benefits. If the market determines CPP has substantial benefits, it will be offered. If not, it won't. The Commission should not attempt to supplant the judgment of the marketplace by mandating CPP. The majority of commenters concur with PageNet that CPP should be allowed to develop as a service option according to market forces without federal regulatory intervention.⁹

Calling party pays meets the statutory definition of a commercial mobile radio service under Section 332 of the Communications Act and is perceived by customers as a wireless telecommunications service.¹⁰ As with other commercial mobile radio services where the FCC has determined that regulatory forbearance to market forces is in the public interest, the Commission should allow CPP service and rates to develop according to market forces.

Consistent with the finding that market forces rather than regulatory action should govern the implementation of CPP service and the development of CPP rates, the FCC should neither mandate *nor preclude* the provision of CPP by wireless carriers. In this

⁹ See BellSouth Comments at 2; Bell Atlantic Comments at 6-8; Comments of Cellular Telecommunications Industry Association ("CTIA") at 4, 6; Comments of Centennial Cellular Corp. ("Centennial Cellular") at 2; GTE Comments at 9-12; Comments of Motorola, Inc. ("Motorola") at 19; SBC Comments at 7-9; U S West Comments at 6-9.

¹⁰ See Comments of the Personal Communications Industry Association ("PCIA") at 4-5. Consistent with the definition of a "commercial mobile radio service" under Section 332, CPP is a for-profit service offered via mobile transmission facilities interconnected to the public switched telephone network, and made available to the public. Customers perceive CPP as one alternative service substitute for a variety of other wireless service options.

regard, the argument raised in the Joint Comments filed by the Rural Telcos in opposition to CPP service must be rejected.¹¹ The Rural Telcos argue that the FCC should rule that reciprocal compensation obviates the need for a wireless carrier to collect a CPP charge for a landline-to-mobile call because the reciprocal compensation charge paid by the LEC to the CMRS carrier for transport and termination of the call fully compensates the CMRS provider for the entirety of its costs associated with transmission of that call. However, this argument ignores the fact that reciprocal compensation is strictly an inter-carrier charge that pertains to the costs up to and including the wireless carrier switch, but does not include the radiofrequency ("RF") network associated with wireless calls, or the other costs of providing commercial mobile radio service. In contrast, CPP is a CMRS service provided to the party who places the call from the landline (or wireless) network as well as the wireless subscriber who receives the call. Thus, notwithstanding inter-carrier transport and termination costs, the CPP rate charged to end user customers reflects the charges for use of the wireless carrier's RF network and the numerous other costs associated with providing CMRS to retail customers, such as sales, marketing, physical plant, operational facilities and overheads.¹² Accordingly, the FCC should clarify that the Rural Telcos are incorrect and that the reciprocal compensation payment from the LEC to a CMRS carrier for transport and termination does not obviate the need for wireless carriers to collect a CPP charge from the end user.

¹¹ See Comments of Bay Springs Telephone Company, Crockett Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Roanoke Telephone Company, Inc. and West Tennessee Telephone Co., Inc. (collectively, the "Rural Telcos") at 2-5.

¹² Accord AirTouch Comments at 4; Omnipoint Comments at 2-3.

III. THE MARKET WILL BEST DETERMINE THE METHOD TO INFORM CUSTOMERS REGARDING THE TERMS AND CONDITIONS OF A CPP SERVICE OPTION

The FCC should not intervene to specify uniform national standards for CPP dialing options or CPP customer notification because the market will best determine the costs and benefits of various alternative ways to address these issues.¹³ The FCC should not adopt certain CPP notification or dialing plan proposals that pose adverse consequences. For example, Omnipoint's suggestion that a separate NXX or number plan area ("NPA") code be dedicated to particular CMRS carriers or types of service for CPP is contrary to the Commission's number portability goals because it will hinder the ability of a CPP customer to use the same number if he or she switches carriers.¹⁴ Allocating a separate NXX or NPA code to CPP also is a waste of numbers, which are already in short supply. Furthermore, use of a separate NXX or NPA for CPP dialing is not desirable because it would require 1+ or 10/11 digit dialing to make a wireless CPP call and create disparities between local calling on wireline and wireless networks, potentially placing wireless carriers at a competitive disadvantage to wireline carriers.¹⁵ A local call should be dialed the same way whether it is wireless or wireline.

¹³ See AirTouch Comments at 28-29.

¹⁴ Cf. Omnipoint at 24-25. Number portability means "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153(30).

¹⁵ Sprint Corp. ("Sprint") observes that the dedicated NXX used in its CPP offering through its local cellular division in Charlottesville, Va., requires subscribers to change their numbers if they choose CPP and is viewed as a drawback. It believes that continued use of a dedicated NXX will be a problem. Sprint Comments at 5-6.

The FCC should allow the industry to develop and test its own standards based on the marketplace need for notifying customers regarding CPP service options. If customer education is necessary, a pre-recorded intercept message is a clear way to warn the calling party that, if the call is to be completed, a CPP charge will be assessed. In contrast, use of a unique dial tone, as proposed by CTIA, to notify callers is untested as a tool for educating callers that a CPP charge will be assessed. In addition, there are costs associated with generating and implementing a unique dial tone such as "stutter dial tone" that could potentially increase the cost of CPP service to customers.¹⁶ Thus, the FCC should leave to the marketplace, rather than regulatory fiat, the determination as to the most effective tools for notifying and educating customers regarding a CPP service option.

Consistent with a market-based approach to allowing CPP to develop, carriers should be free voluntarily to submit informational CPP tariffs or model CPP service contracts to the FCC to disclose the terms and conditions of CPP service to "casual" CPP callers. As CTIA suggests, by maintaining "informational tariffs" or model CPP service reports on file with the FCC on a permissive or voluntary basis, CMRS carriers will be able to provide customers with the relevant terms of CPP end user contracts.¹⁷ Like casual callers who use a calling card to "dial around" their presubscribed interexchange carrier, callers to wireless CPP service in most cases will not have a pre-existing contractual relationship with a presubscribed CMRS provider. Informational CPP tariffs or CPP service reports will allow CMRS providers to disclose the material provisions of the service.

¹⁶ The short separate tones in "stutter dial tone" used to alert a voice mail subscriber that he or she has voice mail are produced by the telephone company's central switching office. *See, e.g., Part 68 Waiver Request of Casio PhoneMate, Inc.*, NSD No. 97-19, 1997 FCC LEXIS 5422 at ¶ 1 (rel. Oct. 3, 1997).

¹⁷ CTIA Comments at 24-30.

Such permissive filings also are important to allow CMRS providers to limit their liability with respect to callers that do not have a pre-existing relationship with the CMRS provider. As Bell Atlantic observes, moreover, limitations on liability are a key concern for CMRS providers in introducing CPP service. The provision of a CPP service option raises increased liability concerns for CMRS carriers to the extent that it expands the potential class of customers paying a rate to CMRS providers -- and thereby the potential class of customers who may have a rate dispute -- beyond the CMRS subscriber who has a contract with a CMRS provider to encompass casual callers from the wireline (or wireless) network.¹⁸

IV. ANY UNIFORM STANDARDS DESIGNED TO ALLOW WIRELESS CARRIERS TO BILL AND COLLECT FROM THE CALLING PARTY SHOULD AVOID INCREASING CARRIERS' COSTS OF PROVIDING WIRELESS SERVICE

The FCC should not impose mandatory billing and collection requirements, but rather, should allow carriers to develop billing and collection arrangements for CPP and negotiate individual arrangements according to market forces. In considering potential "uniform" national methods to develop billing and collection procedures to address the leakage problem, PageNet believes it is critical that the industry not inadvertently impose new or added costs to providing CPP as well as other CMRS services. For example, Illuminet, a provider of line information database ("LIDB") and billing and collection network services, proposes to reduce leakage by establishing a LIDB for wireless communications that would require a LIDB query for each wireless call to direct billing of CPP wireless calls to a national billing clearinghouse.¹⁹ If implemented, this approach will increase the cost of all wireless calls, not just CPP calls. As Omnipoint observes, requiring a LIDB dip for every wireless call or

¹⁸ Bell Atlantic at 6.

¹⁹ See Illuminet Comments at 6 n.10.

page will introduce "much higher cost and . . . greater network complexity" to verify a billable number for wireless CPP purposes.²⁰ This would be an unacceptable result as it would impose higher costs on all CMRS subscribers. In the particular, for paging where CPP appears to be attractive to a niche market and lower income or lower volume customers, introducing surcharges for LIDB queries will raise the cost of service and potentially undermine the appeal of CPP.

In lieu of establishing specific regulatory standards governing LEC billing and collection arrangements,²¹ the Commission may properly rely on its complaint processes to deter specific instances of ILEC abuse against wireless carriers in reaching individual billing and collection arrangements governing wireless CPP offerings. The Commission should clarify that, if a wireless carrier has a complaint regarding, for example, a revenue-sharing provision in a CPP arrangement with an ILEC that is skewed or otherwise unreasonably discriminates in favor of the ILEC, it will exercise its enforcement powers under the Title II complaint provisions of the Communications Act in an expedited and vigorous manner.²²

²⁰ Omnipoint Comments at 5-6.

²¹ Some commenters recommend that the FCC impose a system of mandatory billing and collection requirements. *See, e.g.,* Beeples Comments at 4.

²² The FCC has ancillary jurisdiction to order LECs to provide billing and collection services to CMRS providers for CPP. *Accord* AirTouch Comments at 18-20; AT&T Wireless Comments at 5; Omnipoint Comments at 15.

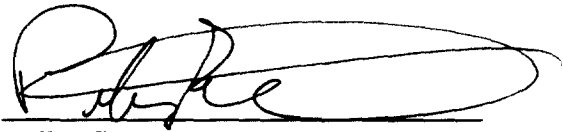
V. CONCLUSION

For the foregoing reasons, the Commission should not proceed to take any action to implementation of CPP by wireless carriers in the United States. Rather the Commission should treat the CMRS industry as it historically has done and rely upon market forces to dictate whether CPP will be made widely available.

Respectfully submitted,

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Dated: January 16, 1998